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**ADVOCACY**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To advise the Committee of the range of Advocacy available in Darlington to people who need social care or who are detained under the Mental Health Act.

**Summary**

2. The Council currently commission with a single provider to provide a range of statutory advocacy services. The services ensure that those people without a “voice” through ability or capacity are supported to stay in control and exhibit choice and are safeguarded where necessary,

**Recommendation**

3. It is recommended that :-
  - (a) The Committee note the content of this report.

**Suzanne Joyner**

**Background Papers**

None

Mark Humble Extension 5857

S17 Crime and Disorder	No direct impact
Health and Well Being	Good advocacy ensures people’s needs are met and rights are upheld
Carbon Impact	This does not have a carbon impact
Diversity	This impacts on a whole range of people
Wards Affected	All Wards are Affected
Groups Affected	All
Budget and Policy Framework	No direct impact
Key Decision	This is not an Urgent Decision
Urgent Decision	This is not a Key Decision
One Darlington: Perfectly Placed	Good advocacy supports an individual to be a part of their community
Efficiency	There are no efficiencies linked to this paper

## MAIN REPORT

### Background

1. In its simplest form “Advocacy” means getting support from another person to help someone express their views and wishes and to help someone make sure their voice is heard. Someone who helps in this way is an advocate. Not all advocates are paid.
2. What advocates do not do :
  - (a) Give a personal opinion
  - (b) Solve problems and make decisions
  - (c) Make judgements about an individual
3. Over the last few years the focus of advocacy has changed with a gradual move away from provision that is not statutory to paid advocacy which is very much linked to legal responsibility.
4. The Council has a contract with Darlington Association on Disability (DAD) to provide paid advocacy to qualifying individuals.

### Statutory Advocacy Provision

5. **Independent Mental Health Advocate (IMHA)** - these are specially trained advocates who can support people under the Mental Health Act. A qualifying individual has a legal right to an IMHA if detained under the Mental Health Act. There are some exceptions but generally a formal detention gives access to IMHA.
6. The role includes helping a qualifying individual understand:
  - (a) Their rights under the Mental Health Act and why certain decisions are made
  - (b) The rights which other people (such as nearest relative) may have in relation to them under the Act
  - (c) The parts of the Act which apply to them i.e. why they are detained
  - (d) Any conditions or restrictions someone is subject to e.g. relation to leave of absence
  - (e) Any medical treatment that they are receiving or might be given.
7. An IMHA can:
  - (a) Access the ward or unit
  - (b) Meet with the individual in private
  - (c) Accompany to meetings with professionals
  - (d) See any medical, social care or other records in relation to the detention
  - (e) Meet and talk to people involved in an individual’s care.

8. An IMHA is funded and provided by the area in which the hospital or unit is based. The impact for Darlington is that there are currently three independent hospitals within Darlington and one NHS hospital all of who detain patients.
9. **Independent Mental Capacity Advocate (IMCA)** - an IMCA's key role is as a safeguard for people who lack capacity and when important decisions need to be made. They are provided under the Mental Capacity Act 2005.
10. An IMCA **must** be instructed in the following circumstances:
  - (a) The individual is aged 16 or over
  - (b) A decision needs to be made about either a long term change in accommodation or serious medical treatment
  - (c) The person lacks capacity to make the decision
  - (d) There is no one independent of services such as a family member or friend who is "appropriate to consult"
11. If no appropriate person to consult is available then a paid IMCA is provided.
12. The IMCA has 4 main roles:
  - (a) Gather information, using a range of sources
  - (b) Evaluate information, this includes trying to work out what the person's wishes or feelings would be if they had capacity to make the decision
  - (c) Make representation, raise issues and concerns with the decision maker. A written report is prepared for the person who instructed the IMCA
  - (d) Challenge decisions, if issues are not resolved with the decision maker before the decision is made IMCA's can challenge the decision. Through complaints or try to get the matter looked at by the Court of Protection
13. IMCAs must also be instructed for people who are being assessed as to whether they are currently being or should be deprived of their liberty where there is no one "appropriate to consult".
14. An IMCA is allocated from the area in which an individual is resident.
15. **Relevant Persons Representative (RPR)** - an RPR is appointed to support a person who is deprived of their liberty under the Mental Capacity Act 2005 (MCA) Deprivation of Liberty Safeguards (DOLS). These safeguards exist to ensure that no one is deprived of their liberty without good reason and that if someone is deprived of their liberty they still have rights.
16. The role of the RPR is to:
  - (a) Maintain contact with the person deprived of their liberty
  - (b) Represent and support that person in all matters relation to the MCA and DOLS
  - (c) Provide support that is independent of commissioners and service providers

17. In general a relevant person's representative is a friend or family member who will ensure that the rights of a person being deprived of their liberty are protected. In cases where there are no friends or family willing or eligible a paid representative will be appointed
18. An RPR must be:
- (a) 18 years or over
  - (b) Able to keep contact with the relevant person
  - (c) Willing to be appointed
19. They must not be:
- (a) Financially interested in the hospital or care home where the relevant person is being deprived of their liberty or be a relative of a person who has a financial interest
  - (b) Employed by or providing services to the care home in which the relevant person is residing
20. **Care Act Advocacy** - the Care Act imposes a duty on local authorities to ensure independent advocacy is in place for those entitled to it. There are two conditions of entitlement:
- (a) The person has substantial difficulty in being involved with their assessment, care and support planning and review or safeguarding and
  - (b) There is no one appropriate and available to support and represent their wishes
21. Substantial difficulty means in:
- (a) Understanding relevant information
  - (b) Remembering Information
  - (c) Using information to help them be involved in making decisions
  - (d) Communicating their views wishes and feelings
22. It is not enough to love and care for the person and know them well. Whoever is supporting an individual have to be able to support the person to be involved in their care and support. They cannot be employed by the Local Authority or paid support for the person in another role.
23. There are some situations when an Individual may not have anyone suitable or the person may not want them involved. In these circumstances the local authority must refer for an independent advocate.
24. There are 3 situations where an advocate must be involved even if there is an appropriate individual to support them. These are:
- (a) If a person is in hospital for more than 4 weeks
  - (b) If a person is in a care home for more than 8 weeks

- (c) If there is a disagreement between the local authority and the appropriate individual and all agree that the involvement of an advocate would benefit the person

25. The Care Act Advocate's role - Advocates get involved in the following:

- (a) A needs assessment
- (b) A carers assessment
- (c) A transition assessment
- (d) The preparation of a care and support or support plan
- (e) A review of a care and support plan
- (f) A safeguarding enquiry
- (g) A safeguarding adult review

26. **The Court of Protection** - For a deprivation of liberty which is not in a hospital or a care home. The local Authority must apply to the Court of Protection to agree a deprivation. For those individuals with no one to represent their interests the Court will appoint a Rule 3 representative, again this can be a friend or family member. For those individuals with no or no appropriate person to act for them a paid advocate will be appointed. Simply, the Court is asking the representative as someone who is independent of the Local Authority and who knows the position on the ground to consider whether from the perspective of the individuals best interests they agree or do not agree that the Court should authorise the individuals package of care and support. For many individuals this role will and is undertaken by a family member or friend. There are a number of individuals who do not have someone in their lives who can undertake this role and they will require a paid representative in such circumstances to give an independent view than that of the Local Authority.

27. **General Advocacy** - There is still the opportunity for general advocacy in some circumstances, however there is agreed by a social worker. A recent example involves a woman receiving support through the court process in relation to her children.

28. **People who use British Sign Language** - The Local Authority have a small contract with a provider to provide specialist advocacy for people who use British Sign Language.

29. **NHS Advocacy** - For those individuals who wish to make a complaint against the NHS, access to independent advocacy is available. This is funded by the NHS, however is commissioned on their behalf by the Local Authority.

30. **Mental Health** - Darlington CCG, commission DAD to provide general advocacy to individuals who have a mental health problem who do not meet the requirements set out for an IMHA. This includes those in hospital informally and those who need wider support e.g. to remain in employment.